UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRAGRANCENET.COM, INC., Plaintiff,	:	CV 06 2225 (JFB) (AKT)
-v-	:	
FRAGRANCEX.COM, INC. and JOHN DOES 1-20, Defendants.	:	**ANSWER TO SECOND AMENDED COMPLAINT**

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Defendant FragranceX.com Inc., by its attorneys Moses & Singer LLP, answers the Second Amended Complaint herein as follows:

1. Denies the allegations in Paragraph 1 of the Second Amended Complaint.

2. Denies the allegations in Paragraph 2 of the Second Amended Complaint.

3. Admits the allegations in Paragraph 3 of the Second Amended Complaint, except admits that plaintiff seeks the relief described.

4. Admits the allegations in Paragraph 4 of the Second Amended Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 5 of the Second Amended Complaint.

6. Admits the allegations of Paragraph 6 of the Second Amended Complaint.

7. Denies the allegations of Paragraph 7 of the Second Amended Complaint.

8. Admits the allegations in Paragraph 8 of the Second Amended Complaint.

9. Admits the allegations in Paragraph 9 of the Second Amended Complaint, except denies that any tortious conduct or injury occurred.

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10. Admits the allegations in Paragraph 10 of the Second Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 11 of the Second Amended Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 12 of the Second Amended Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 13 of the Second Amended Complaint, except denies that the photographs that are the subject of this action are original or copyrightable.

14. Denies the allegations of Paragraph 14 of the Second Amended Complaint.

15. Denies the allegations of Paragraph 15 of the Second Amended Complaint, except admits that plaintiff obtained the copyright registrations attached as Exhibit A.

16. Denies the allegations of Paragraph 16 of the Second Amended Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of Paragraph 17 of the Second Amended Complaint.

18. Denies the allegations of Paragraph 18 of the Second Amended Complaint, except admits that plaintiff asserted that it had rights in unspecified photographs and demanded that defendant stop using the unspecified photographs.

19. Denies the allegations of Paragraph 19 of the Second Amended Complaint, except admits that defendant made the communication alleged.

20. Denies the allegations of Paragraph 20 of the Second Amended Complaint, except admits that plaintiff commenced this action.

21. Denies the allegations of Paragraph 21 of the Second Amended Complaint.

22. Defendant repeats and realleges the allegations contained in paragraphs 1-21 above as if fully set forth herein.

23. Denies the allegations of Paragraph 23 of the Second Amended Complaint.

24. Denies the allegations of Paragraph 24 of the Second Amended Complaint.

25. Denies the allegations of Paragraph 25 of the Second Amended Complaint.

26. Denies the allegations of Paragraph 26 of the Second Amended Complaint.

27. Denies the allegations of Paragraph 27 of the Second Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

28. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

29. The photographs upon which this action consist entirely of pictures of copyrighted works in which the copyright is owned by parties other than plaintiff.

30. Plaintiff does not have the consent of the owners of copyright in the works pictured in plaintiff's photographs to make, distribute or display photographs of those works.

31. By reason of the foregoing, plaintiff has no copyright in the photographs that are the subject of this action.

THIRD AFFIRMATIVE DEFENSE

32. Upon plaintiff's identifying photographs in which it claimed copyright, defendant FragranceX.com Inc. promptly removed from its website photographs claimed by plaintiff to infringe copyright in plaintiff's identified photographs.

33. Plaintiff refused to advise defendant FragranceX.com Inc. of all of the photographs that plaintiff claimed defendant infringed in communications preceding the commencement of this action, despite defendant's request therefor.

34. By reason of the foregoing, plaintiff failed to mitigate its alleged damages.

FOURTH AFFIRMATIVE DEFENSE

35. By reason of the facts set forth in the Third Affirmative Defense, plaintiff has unclean hands in claiming and seeking to enforce copyright in the photographs that are the subject of this action.

FIFTH AFFIRMATIVE DEFENSE

36. By reason of the facts set forth in the Third Affirmative Defense, plaintiff is estopped from claiming and seeking to enforce copyright in the photographs that are the subject of this action.

SIXTH AFFIRMATIVE DEFENSE

37. By reason of the facts set forth in the Third Affirmative Defense, plaintiff waived the right to claim and enforce copyright in the photographs that are the subject of this action.

WHEREFORE, defendant FragranceX.com Inc. demands judgment dismissing the Second Amended Complaint, for its costs and disbursements in this action including counsel fees, and for such other relief as may be just.

Dated: August 7, 2006
New York, New York

MOSES & SINGER LLP

By: ______________________

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